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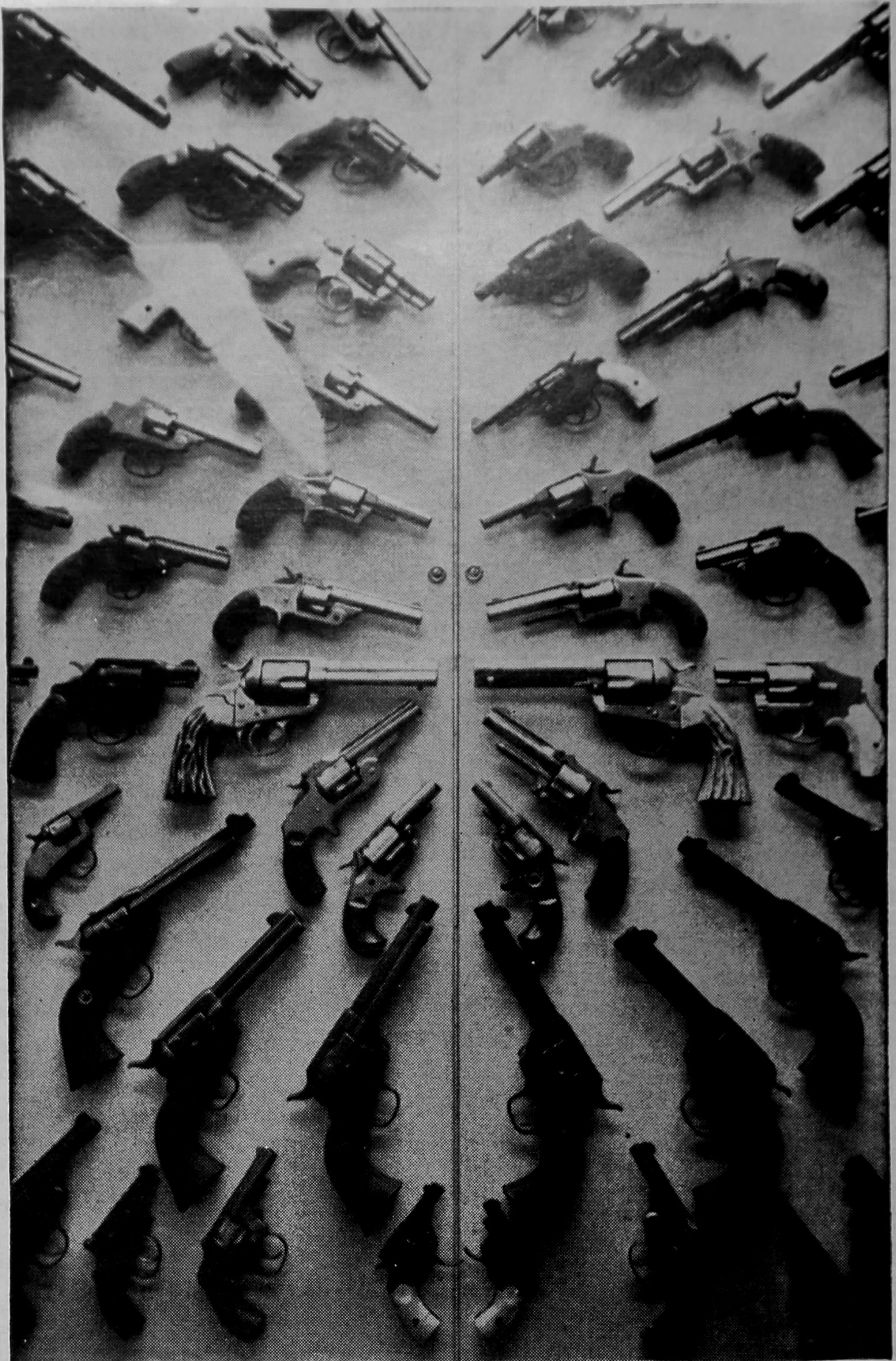
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THE FAILURE OF FEDERAL GUN CONTROL

by **CARL BAKAL**

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The Failure Of Federal Gun Control



—Donald McCullin, Magnum

by CARL BAKAL

In the wake of the assassinations of Martin Luther King and Robert F. Kennedy, Congress enacted the Gun Control Act of 1968 to "provide for better control of the interstate traffic in firearms." Signed by President Lyndon B. Johnson on October 22, 1968, and dated to take effect on December 16, the landmark measure was the first federal gun control legislation of any consequence passed in three decades.

The new law virtually bans the interstate and mail-order shipment of firearms to individuals and forbids over-the-counter gun sales to minors. It also prohibits the possession of guns by convicted criminals and certain undesirables, and bars the importation of

those cheap, concealable foreign handguns responsible for so much murder and mayhem in this country.

Yet, it is scarcely more difficult to get a gun today than it was before the new law went into effect two-and-a-half years ago. Almost anyone—even a murderer, a madman, an addict, an alcoholic, or another potential assassin—can still easily buy some sort of gun, including a \$265.85 Remington deer rifle of the type used to kill the Reverend Dr. King and a \$6 Iver Johnson pistol like the one involved in the murder of Senator Kennedy.

In fact, during recent years, there has been a sharp increase in the sale of guns and particularly handguns, which, though comprising only about a quarter of the roughly ninety million privately owned firearms thought to be in this country (some authorities put the figure as high as 200 million), now account for half of all our homicides and three-quarters of all firearms homicides. Whereas the annual sale of

shotguns and rifles has doubled since 1963, the sale of handguns, few of which are usable for sporting purposes, has quadrupled, according to the National Commission on the Causes and Prevention of Violence, which notes that drastic increases in gun purchases occur in areas that have experienced civil disorders. With twenty-four million handguns already in private hands, an additional two-and-a-half million are being manufactured domestically or imported every year. Today, one new handgun is sold in the United States every thirteen seconds, and used handguns are being traded at the rate of more than two a minute.

In Dallas, gun dealers say their handgun sales have more than doubled since the Gun Control Act of 1968 went into effect. "Before the gun law was passed, we were selling seventy-five to one hundred guns a month," says one dealer. "Now we average two hundred and fifty to three hundred sales a month." And Dallas District Attorney

CARL BAKAL, a leading authority on gun control, is the author of *The Right to Bear Arms* (in paperback, *No Right to Bear Arms*).

Henry Wade says, "If the gun law is having any effect, I can't tell what it is."

"I don't think that the gun law has cut down the availability any," says Jamie Moore, chief of police in Birmingham, Alabama, a state in which one dealer alone reported that his sales had tripled during the first six months the law was in effect.

Inevitably, crimes committed with guns across the nation have also shown a sharp increase. Armed robbery with guns increased from 99,000 in 1968 to 115,000 in 1969; aggravated assaults by gun increased from 65,000 to 73,000 and murder by gun from 8,900 to 9,400. Coincidentally, our 9,400 firearms homicides in 1969 equaled exactly the number of Americans killed in combat in Vietnam that year. When you add the nearly 3,000 annual domestic fatal victims of firearms accidents and the 10,500 gun suicides here, the total of our annual home-front firearms fatalities now amounts to 23,000—or, in a *single* year, more than one-half of all the combat deaths the U.S. military has suffered during our entire decade in Vietnam.

What is the reason for all this? What has happened to the law that was supposed to curtail this growing glut of guns and to "provide support to federal, state, and local law enforcement officials in their fight against crime and violence"?

The fact is that the Gun Control Act of 1968, although well-intended and widely heralded as a major step forward, is a sadly inadequate compromise law, one riddled with as many holes as a marksman's target. For example, a provision of the act did indeed stop the importation of the snub-nosed pistols and revolvers known as "Saturday night specials"—cheap, concealable guns of the kind that no sportsman and few police officers would want. Retailing for anywhere from \$30 to \$15 or even less, they had been coming into the United States (largely from West Germany, Italy, and Spain) at the rate of 750,000 a year, and were a favorite of the criminal, being used in no less than 50 per cent of all crimes involving guns, according to the National Commission on Violence.

However, the new law, while banning the importation of these guns, did not prohibit the importation of their *parts*. Hence, thanks to Yankee inge-

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nity, a quaint new "cottage industry" has sprung up in this country. Enterprising former importers have been assembling Saturday night specials here using parts from abroad and cheap local labor—in Miami, Cuban refugees are paid about \$1.90 an hour—working in makeshift factories such as converted garages and even a church. In addition, some domestic manufacturers are producing these cheap handguns from parts made exclusively in the United States. As a result, total domestic production of these guns during 1970 was estimated to be about one million—or far more than the annual flow of foreign guns that the 1968 law was supposed to stop.

In any number of specialized gun magazines or newspapers sold by subscription or on newsstands you can see mail-order advertisements for these guns, which therefore soon find their way to almost every part of our country.

But doesn't the Gun Control Act prohibit the interstate mail-order sale of these and other guns? Yes, an individual on his own cannot purchase or sell a gun across state lines. But there are no federal restrictions on gun shipments between licensed *dealers* in different states. Hence, if a person who lives in one state wishes to buy a gun available in another state, he can place an order for it through a federally licensed dealer in his home state. The dealer who has the gun then sends it to the dealer in the purchaser's state of residence. The purchaser can then pick up the gun from the dealer in his home state.

Under the act, any resident of a state can purchase a gun anywhere in his state provided he meets specified minimum age requirements (twenty-one for handguns and eighteen for long guns) and is not under indictment or has not been convicted of a crime punishable by more than a year's imprisonment. Nor can he be a fugitive from justice, a narcotics addict or unlawful user of

drugs, an adjudged or committed mental incompetent, or anyone else otherwise disqualified from gun ownership by state or local law. However, the federal law provides no foolproof way for gun dealers to check the background of a would-be purchaser or, for that matter, even to determine whether the person they are selling to is just who he says he is. A driver's license is usually considered sufficient identification to establish a person's name, address, and age. And so, any proscribed person can easily get a gun, as well as ammunition for it, by presenting false credentials or by simply lying. Another gaping loophole in the 1968 law is that any legal purchaser of a gun can, with virtually no risk of federal prosecution, resell or give it in his own state to virtually any other individual—a friend, a neighbor, even a total stranger, no matter how unsavory his background.

Aren't there state laws to screen out such persons? Unfortunately, most state gun laws are inadequate, nonexistent, or unenforceable. No states have any licensing laws that really restrict the purchase and possession of rifles or shotguns, and few states have any meaningful laws that apply to handguns. In fact, eight states have no law against felons buying firearms, and in thirty-five states lunatics can legally own guns. The National Commission on Violence rated New York, Massachusetts, and perhaps New Jersey as the only states with restrictive handgun licensing laws that are strictly enforced. The commission also noted that of the estimated twenty-four million handguns in this country, only about three to five million were covered by records maintained by the states. Yet, the new federal law has left it largely to the states to carry the burden of dealing with the menace of the handgun.

To safeguard themselves against the shortcomings of our ineffectual federal and state laws, a number of munic-

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ipalities, during the past few years, have enacted laws of their own aimed at restricting the sale of firearms and ammunition to their residents. For example, in 1965 Philadelphia passed an ordinance much stricter than the permissive Pennsylvania handgun licensing law. The tolerant state law imposed on would-be handgun purchasers only the minor inconvenience of having to wait forty-eight hours for delivery after filling out a perfunctory application form. But applicants were not required to furnish fingerprints or photographs; thus, no meaningful check could be made for a criminal record. On the other hand, under the city ordinance, those wishing to purchase any type of gun—shotguns and rifles as well as handguns—would have to apply for a police permit, furnishing fingerprints, photographs, and the firearm's serial number.

What effect has the ordinance had? From 1965 to 1969, criminal homicides in Philadelphia increased 32 per cent. However, this was far below the 47 per cent rise across the nation as a whole during the same period. Significantly, only 44 per cent of Philadelphia's murders in 1969 involved guns, slightly

above the 43 per cent in 1965, whereas the average for the nation increased from 57 per cent in 1965 to 65 per cent in 1969. Perhaps even more noteworthy is the fact that during the six years the ordinance has been in effect permits have been denied to 779 persons out of a total of 27,858 would-be gun purchasers. Among the 779 prevented from purchasing guns locally have been 123 burglars, 48 robbers, 121 persons with convictions for aggravated assault and battery, 16 rapists, 7 habitual drunks, 15 narcotics addicts, 96 people with previous records for illegally carrying concealed and deadly weapons, 27 persons convicted of intent to kill—and 12 murderers.

The experience of Toledo, Ohio, has been equally dramatic. Only a few years ago, that city of 375,000 was known as the gun capital of the Midwest. Firearms of all kinds could be bought there not only at gun shops but at jewelry stores, supermarkets, and gasoline stations—with no questions asked—in contrast to the situation in Michigan, which requires a permit of sorts for the purchase of handguns. It is no wonder that the great majority of the guns used in the 1967 Detroit

riots came from nearby cities in such neighboring states as Ohio; indeed, many of the guns came from Toledo, only an hour away. A 1968 survey showed that of the 13,000 handguns sold by one Toledo dealer during a nine-month period no fewer than 5,448 went to Michigan residents.

In spite of repeated appeals from Toledo officials, the Ohio Legislature for years refused to enact a law that would control the unrestricted traffic in firearms. Finally, in August 1968, the Toledo City Council enacted an ordinance of its own that had been drafted by the city's chief counsel, John J. Burkhart. Aimed especially at the Saturday night specials, the ordinance requires anyone in the city who owns or wishes to obtain a handgun to have an ID card (cost: \$3). The cards, which are valid for three years, are issued to all applicants except minors under twenty-one, known fugitives, certified mental cases, narcotics addicts, habitual drunkards, and those with serious felony records.

In the twelve-month period prior to the passage of the ordinance, thirty-four murders were committed in Toledo, twenty-two of them, or 61 per cent, with handguns. Two years later, during the twelve-month period ending July 1970, the number of murders had dropped to twenty-six, fourteen of them, or 53 per cent, with handguns, this in the face of a sharp increase in the number of murders across the nation. Robberies and aggravated assaults involving handguns showed an equally dramatic drop. While crediting these decreases to all of the city's recently intensified efforts to reduce crime, Chief Counsel Burkhart, noting that half the gun outlets in town have gone out of business, observes, "The new gun law and the resultant greater unavailability of guns locally cannot help but be a big factor."

Since Louisville, Kentucky, enacted its ordinance requiring an eight-day waiting period to buy a handgun, armed robberies in that city have declined 9.5 per cent and assaults with firearms have also decreased. However, in other cities—such as Washington, D.C., New York, Chicago, San Francisco, and Miami Beach—that have also enacted firearms ordinances of various kinds during the past few years, the effect of the laws is not yet so readily apparent, for one thing, because of the absence of equally stringent laws in surrounding or other nearby jurisdictions. For example, in commenting on Washington's strict law, which requires the registration of all firearms and limits ammunition purchases only to holders of registration certificates, Chief of Police Jerry V. Wilson says, "The only effect that



"But I just can't go home today, Dr. Brooks. I've got visitors booked for the next two days."

"The administration has played a not inconsequential role in the relentless efforts of the gun lobby to emasculate the 1968 act through the stratagem of having its provisions repealed bit by bit."

this ordinance has had is that it has forced people to buy firearms in the suburbs."

Evidence to this effect comes from a 1969 Senate Juvenile Delinquency Subcommittee study of 177 sales of ammunition to District of Columbia residents—by gun dealers in nearby Maryland. An FBI check showed that at least sixty-six, or 37 per cent, of the ammunition purchasers had criminal arrest records. The study showed that ammunition was sold to persons convicted of such crimes as murder, armed robbery, assault, assault with a dangerous weapon, grand larceny, rape, and housebreaking, as well as to persons with a total of 203 arrests for misdemeanors—136 of them drunk charges.

Speaking for New York, Mayor John V. Lindsay says, "Our city is proud of its significant role in enacting firearms control legislation. But we are only one city, and the problem of gun trafficking is one that cuts across city and state boundaries." And a New York City police captain comments, "Hell, you can drive to Virginia, only two hundred and fifty miles away, and see signs in hardware stores that say 'Hand-guns for sale; no restrictions.'"

In New York City, 83 per cent of a sample of handguns confiscated by the police were found to have been acquired outside the state. Similarly, in Massachusetts, where there are also strict gun controls, a ten-year study by the state police traced 87 per cent of the guns used in crimes in that state to purchases in other states.

Even today, it is quite simple for a Toledo resident—or anyone who says he is a Toledo resident—to circumvent his city's ordinance. To prove this for myself, I recently visited a large shopping center just one mile outside of Toledo's city limits. On display there, in addition to the customary food, clothing, furniture, and other usual household sundries, was a showcase filled with an array of glittering handguns. I selected a Harrington & Richardson Model 622 six-shot revolver, which was priced at \$32.82. Before writing up the sale, the clerk, in accordance with the requirements of the 1968 federal law, asked me to show identification establishing that I was an Ohio resident and over twenty-one. I pulled out a driver's license that I had borrowed from a Toledo friend.

(It could just as well have been stolen.) The physical description on it bore no resemblance whatever to me. Had I decided to complete the transaction, I could have walked out and performed whatever mischief I wished.

Yet, it is reasonable to assume that any law, no matter how limited in scope, that prevents or makes it more difficult for dangerous or potentially dangerous persons to acquire firearms must have at least *some* effect. Belying charges, too, that gun laws are generally ineffective because criminals who want guns badly enough will go outside the law to get them anyway is the experience not only of Philadelphia but of New Jersey, which, in August 1966, enacted a unique statewide law comparable to the Philadelphia ordinance. During the first two years the New Jersey law was in effect, approximately 7 per cent of the applicants for permits were found to have criminal records. In California, in a single year, police checks of gun dealer records thwarted 806 would-be purchasers—697 of them ex-convicts, seventy-four narcotics addicts, twenty-seven aliens, and eight minors.

Every reliable study indicates that where gun control laws are most stringent, the murder rate, as well as the percentage of murders involving firearms, is lower than in areas where gun laws are weak or non-existent and which, hence, have a greater number of guns per capita. Contrary to popular belief, New York City, despite its rising incidence of crime, actually ranked only tenth among the nation's fifteen largest metropolitan areas in 1969 in number of homicides per 100,000 population, according to FBI data. Philadelphia, also with a strict gun law, ranked eleventh, and Chicago seventh. Even the District of Columbia ranked as far down as sixth. At a rate of 9.4 violent deaths per 100,000 inhabitants, New York stood far behind Houston's 16.8, St. Louis's 14.3, Cleveland's 13.8, Baltimore's 13.4, and the 13.0 rate for Detroit—all cities with weak, if any, gun laws.

There is a similar correlation between state gun laws and homicides. New York, Massachusetts, and New Jersey, which have the strictest gun laws in the nation, are also among our most densely populated states (ranking among the top five) and have a high ethnic mix as well as other of the factors that, according to the FBI, should make for a high incidence of crime. Yet, in terms of murder rates, all three states rank fairly low, New York twenty-third in the nation. As to the percentage of murders committed by firearms, the three states are among the five lowest of our fifty states. On the other hand, Alaska, our most sparsely

(Continued on page 49)



"At that point, I leaped to my feet and in a ringing voice cried, 'Ladies and gentlemen of the jury, if I am guilty, then we are all guilty!'"

Gun Control

Continued from page 15

populated state and with no controls on the purchase of guns, has the nation's highest murder rate. Nevada, Alabama, Mississippi, Texas, Georgia, and South Carolina—all with a minimum of controls—are among the ten states with the highest murder rate and also have a relatively high percentage of murders committed with firearms. In Alaska and Texas, for example, the percentages are 71.4 and 68.7 respectively, compared to 31.8 in New York.

In spite of its shortcomings, even the federal 1968 Gun Control Act has had some salutary effects. During the first eighteen months the act was in force, the Internal Revenue Service, which polices the act, made 2,522 arrests for violations of it—more than four times the 599 arrests made during the previous eighteen months under the old and weaker federal firearms laws. Many of the violations were for failing to disclose criminal records or for using fictitious names when purchasing a gun.

Limited as it is, the new federal law also was responsible for the indictment of Angela Davis—until recently, one of the nation's ten "most wanted" fugitives—on charges of murder and kidnaping in connection with the celebrated San Rafael, California, courthouse shoot-out last August that took the lives of four persons, including a judge. Through records required by the Gun Control Act, four of the guns used in the shoot-out were traced to purchases made by Miss Davis.

With the number of federal prosecutions for violations of the law having tripled since 1968, even the Justice Department has conceded the usefulness of the new federal statute in bringing various offenders to book. Clearly, the inescapable conclusion again is that gun legislation that makes it easier to charge violations of the law must play a role in the prevention and detection of crime.

Who could possibly object to such legislation? Strangely enough, among those who do is none other than the administration itself, in spite of its vaunted concern over law and order and crime in the streets. The administration has hardly bothered to conceal its distaste for the 1968 statute—not because it is too weak, but rather because of the fanciful notion that it is too strong. Consequently, the administration has proposed no legislation whatever to plug the many loopholes in the law, not even the obviously needed measure to prohibit the escalating manufacture and sale of the

cheap domestically produced handguns of the sort that, if foreign-made, would not meet the statute's present standards for importation.

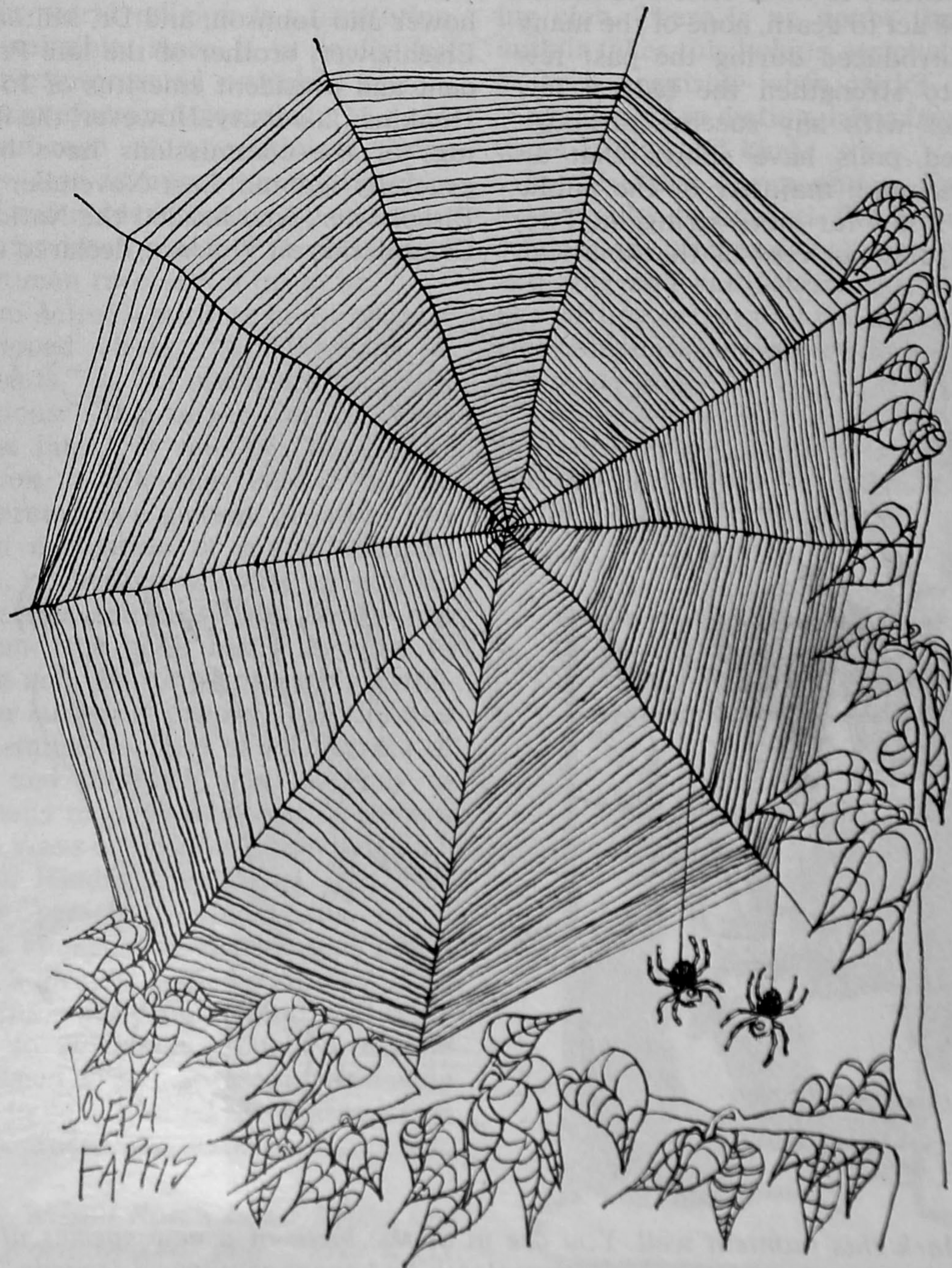
In opposing gun registration and persisting in the fiction that gun control should be left a matter primarily for local and state regulation, President Nixon and Attorney General Mitchell are apparently still of the view that their administration's political strength lies where the guns are: 59 per cent of Southerners own guns (which accounts for 72 per cent of their region's homicides), whereas only 34 per cent of Easterners are gun owners.

Thus, in April, at the centennial convention of the National Rifle Association, where the featured speaker was Senator Barry Goldwater, it was not surprising to hear NRA President Woodson Scott tell the assemblage that the NRA had been assured by "important members of the administration" that there would be no increased effort to curb the traffic in guns. This assurance presumably stemmed from a little-publicized mid-January White House meeting at which three top NRA officials met with administration staff members and various representatives

of the gun lobby in a room across from President Nixon's office.

The gun lobby's ability to reach into the halls of the high and mighty is also indicated by the fact that a gun club, affiliated with the NRA, now operates right out of Defense Secretary Melvin Laird's office, which, among other things, also serves as a focal point in the nation's capital for lobbying against gun controls.

Indeed, the administration has played a not inconsequential role in the relentless efforts of the gun lobby to emasculate the 1968 act through the stratagem of having its provisions repealed bit by bit. So successful have these efforts been that in November 1969—less than a year after the act went into effect—Congress, in a move supported by the administration and without a minute of hearings, repealed the act's requirement that a person buying shotgun shells and high-power rifle ammunition go through the minor inconvenience of furnishing the dealer with his name, address, age, and verifying identification. In protesting the repeal, Representative Emanuel Celler of Brooklyn, who had guided the act through the House, noted that, in the



"This is a helluva time to tell me you don't like this location."

previous year, shotgun and rifle ammunition had been responsible for the murder of 1,600 Americans. Also pointed out was the fact that ammunition controls had been included in the act only after thirty-five days of public hearings at which 154 witnesses had appeared, and that the full Senate had approved the controls after six weeks of debate.

The campaign this year is to exempt .22 caliber rim-fire ammunition, too, with no fewer than seventeen bills already introduced in the 92nd Congress to this effect. This is in spite of the fact that millions of revolvers and pistols, including many of the Saturday night specials, as well as most rifles, use this kind of ammunition, which accounts for about 70 per cent of the ammunition produced and sold in America, yet is rarely used for hunting. On the other hand, it is the most criminally abused ammunition, the kind most often used in armed robberies, as well as in no less than 3,300 murders in 1968, one of the victims having been Senator Robert F. Kennedy. At least half a dozen bills have also been introduced in the 92nd Congress to repeal the 1968 act entirely.

In contrast to these efforts to nibble the 1968 act to death, none of the many bills introduced during the past few years to strengthen the federal law has met with any success, although repeated polls have shown that an overwhelming majority of the public favors a law far more stringent. Two-thirds to 81 per cent of the American

people, according to the Harris and the Gallup polls, approve of the registration of all firearms and the licensing of all gun owners. The majority polled by Gallup is also in favor of a law requiring a person to obtain a police permit before he or she may buy a gun.

Provisions of this sort have been incorporated into a bill by Senator Edward M. Kennedy that would require the registration of all firearms and the licensing of all gun owners. In addition, the bill would ban the domestic production, sale, and possession of all handguns not designed for sporting use—that is, the kind commonly used in holdups and other crimes. Going even further, a bill introduced by Representative Abner J. Mikva of Illinois would ban handguns of any kind for virtually all but law enforcement officers and the military.

Essentially, the same proposals have been included in the various recommendations of a procession of four prestigious Presidential commissions in the past four years. Serving on or heading up these commissions has been a bipartisan array of some of the nation's most distinguished and knowledgeable citizens, including two Attorneys General under Presidents Eisenhower and Johnson, and Dr. Milton S. Eisenhower, brother of the late President and president emeritus of Johns Hopkins University. However, the findings of the commissions have been generally ignored. Last November Dr. Eisenhower, who headed the National Commission on Violence, declared that

the United States held "the distinction of being the clear leader in violent crime among modern stable nations," as well as of having the highest gun-to-population ratio in the world, and stated, "I continue to be perplexed by the blind, emotional resistance that greets any proposal to bring this senseless excess under control." And as recently as May 26, 1971, he warned a Senate subcommittee that "there are arsenals being built up by the extreme Right and the extreme Left," and sadly concluded, "but from the Executive Branch, which brought us [the commission] into being, there has been almost total silence."

The hypocritical attitude of the administration was exemplified by the White House conference of law enforcement officers held on June 3 to discuss means of coping with the recent rash of killings of policemen. Conspicuously missing from the invitation list, which included police chiefs and sheriffs from such places as Brighton, Colorado, Toms River, New Jersey, and Oneida, New York, was the head of the nation's largest police force, New York City Police Commissioner Patrick V. Murphy, although of the fifty-one policemen killed so far this year, most of them with handguns, seven were on the New York force. As a frequent and outspoken advocate of strong federal gun control legislation, Murphy by his vigorous presence would have been embarrassing to President Nixon and Attorney General Mitchell, who at the meeting reiterated their opposition to further gun controls and, as their only solution to the problem of police killings, called for legislation to provide \$50,000 to the family of any policeman unfortunate enough as to be slain in the future.

Certainly, there can be no question that the overwhelming public majorities that say they favor strict firearms controls, of the sort long in practice in twenty-nine European countries, also seem unwilling to compel the national commitment necessary to implement such controls via political pressure and ultimately the ballot. As David Steinberg, executive director of the National Council for a Responsible Firearms Policy, has put it, "They seem to be waiting for a White House initiative that will not come soon—or another shock to the national conscience."

LITERARY I. Q. ANSWERS

1. Tiresias, g; 2. Franny Glass, f; 3. Candide, i; 4. Silas Lapham, b; 5. Pierre Bezuhov, h; 6. Babbitt, c; 7. Hrothgar, d (*Beowulf*); 8. Hester Prynne, a; 9. Zarathustra, e.

Answer to Wit Twister, page 47: parsing, rasping, sparing, parings.



"Mark this moment well. You are in at the birth of a new species of the performing arts that will henceforth be known as musical comedy."